

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Application of	)	
	)	
WHITE EAGLE CONCRETE, INC.	)	FCC File No. 0001141390
	)	
For New Trunked Industrial/Business	)	
Transportation Station at Mesquite and Las Vegas,	)	
Nevada	)	

**ORDER ON RECONSIDERATION**

**Adopted: July 16, 2003**

**Released: July 21, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On March 12, 2003, White Eagle Concrete, Inc. (“White Eagle Concrete”) filed a Petition for Reconsideration<sup>1</sup> of a March 6, 2003, action of the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division Wireless Telecommunications Bureau dismissing the application for a trunked Industrial/Business Transportation station in Mesquite and Las Vegas, Nevada. For the reasons set forth below, we grant the Petition in part and otherwise dismiss the Petition because one location on White Eagle Concrete’s application did not comply with Section 90.621(b)(4) of the Commission’s Rules.<sup>2</sup>

2. *Background.* Southern California Edison Company (Southern California Edison) is the licensee of trunked Station WNVW897, Boulder City, Nevada. On January 2, 2003, the Commission received White Eagle Concrete’s application for a new license to operate on the same frequencies 23.7 km (Location 3, Las Vegas, Nevada) from Southern California Edison’s site. On March 6, 2003, the Commission dismissed the application because White Eagle Concrete’s proposed operations were violative of the co-channel separation requirements set forth in the Commission’s Part 90 rules<sup>3</sup> and did not seek a waiver.<sup>4</sup> Southern California Edison operates on frequencies 936.0000 and 936.9250 MHz.

3. On March 12, 2003, White Eagle Concrete requested reconsideration of the Branch’s action.<sup>5</sup> White Eagle Concrete states that the application proposed to operate Location 3 under secondary status, which would operate on a non-interference basis to the primary operation of the incumbent licensee,<sup>6</sup> Southern California Edison. Hence, White Eagle Concrete claims that it need not request a waiver.<sup>7</sup>

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<sup>1</sup> White Eagle Concrete, Inc. Petition for Reconsideration (filed Mar. 12, 2003) (Petition).

<sup>2</sup> 47 C.F.R. § 90.621(b)(4).

<sup>3</sup> See 47 C.F.R. § 90.621.

<sup>4</sup> See Automated Dismissal Letter, Reference Number 1772377, effective Mar. 6, 2003, generated Mar. 7, 2003.

<sup>5</sup> Petition.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

White Eagle Concrete believes the dismissal was erroneous and thus, requests that the Commission reconsider the dismissal, revert the application to pending status, and then grant such application.

4. *Discussion.* Section 90.621 of the Commission's Rules requires that the minimum distance separation of co-channel stations is 88 km. It does not authorize exceptions to the separation requirements for secondary stations or locations. Therefore, any location must comply with the rule regardless of primary or secondary status. However, an applicant seeking to operate stations located at distances less than those prescribed in the short-spacing table set forth in Section 90.621(b)(4) must request a waiver with its application. Additionally, the applicant must submit an interference analysis that shows that co-channel stations would receive the same or greater interference protection than provided in the table.<sup>8</sup> In the alternative, the applicant may submit with its application letters of concurrence indicating that the applicant and each co-channel licensee within the specified separation agree to accept any interference resulting from the reduced separation between their stations.<sup>9</sup> White Eagle Concrete did not submit either a waiver request or a letter of concurrence from Southern California Edison. Accordingly, the Branch properly dismissed its application with respect to this location. The Petition only argues that Location 3 is applied for as a secondary location. Consequently, we will dismiss White Eagle Concrete's Petition with respect to Location 3.

5. White Eagle Concrete's proposed Locations 1 and 2 (Mesquite, Nevada) satisfy the distance requirements of Section 90.621.<sup>10</sup> Accordingly, we believe that the Branch's dismissal of the application was erroneous with respect to these locations. Consequently, we will grant White Eagle Concrete's Petition with respect to Locations 1 and 2, and we will direct the Branch to revert the application to pending status and process it with respect to these locations.

6. IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by White Eagle Concrete, Inc., on March 12, 2003, IS GRANTED IN PART AND DISMISSED IN PART, as indicated herein.

7. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, that the Licensing and Technical Analysis Branch SHALL PROCESS File No. 0001141390, Locations 1 and 2 only, consistent with this Order on Reconsideration and the Commission's Rules.

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<sup>8</sup> *Id.*

<sup>9</sup> 47 C.F.R. § 90.621(b)(5).

<sup>10</sup> Location 1 is a base station located in Mesquite, NV, and Location 2 is a collection of mobile units centered on Location 1. They are located 103.77 km from Southern California Edison's Station WNVW897.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau